

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Appeal No. 14127 of Z Parking Inc., pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the administrative decision of the Deputy Zoning Administrator dated February 13, 1984, rescinding Certificate of Occupancy No. B-136951 for the use of the subject premises as a parking lot or, in the alternative, application of the Grace Street Corporation, N.V., under Paragraph 8207.11 for a variance from the use provisions (Paragraph 4402.412) to operate a parking lot in a W-1 District at the premises 3200 Grace Street, N.W., (Square 1188, Lot 120).

HEARING DATE: May 16, 1984

DECISION DATES: June 6 and July 11, 1984

FINDINGS OF FACT:

1. The subject property is located at the southwest corner of the intersection of Wisconsin Avenue and Grace Street and is known as premises 3200 Grace Street, N.W. It is zoned W-1.

2. The subject site is rectangular in shape and contains 4,112 square feet of lot area. The lot has a frontage of 58.25 feet along Grace Street and 70.75 feet along Wisconsin Avenue.

3. The lot is currently improved with a two-story brick structure, with a garage entrance facing Wisconsin Avenue, on the southern portion of the site. The remainder of the lot is paved and striped for parking purposes.

4. The owner of the property purchased the site in approximately January of 1983 for possible mixed-use development at a future date. The premises were vacant at the time of purchase and were used illegally for parking by neighbors and visitors to the area in a random, unsupervised manner.

5. For a period after its purchase of the site, the owner of the property allowed the continued use of the site for parking by neighbors at no charge. Disputes over parking on the site between users of the lot and the need for and prohibitive cost of insurance caused the owner to close the lot completely by installing posts and chains.

6. The lot remained vacant until November, 1983, when the owner entered into a lease agreement with Z Parking, Inc., the current lessee, for parking purposes.

7. The lessee applied for a certificate of occupancy to operate a parking lot at the subject premises on November 17, 1983. Certificate of Occupancy No. B-136951 was subsequently issued on November 23, 1983. License No. 072168, valid from January 1, 1984, through December 31, 1984, was also issued for a parking establishment at the subject premises.

8. The lessee made improvements to the site and began operation of the site as a commercial parking facility, utilizing both the existing building and the paved lot.

9. Sub-paragraph 4402.412 of the Zoning Regulations specifically prohibits a parking lot in the W-1 District, in which the subject site is located.

10. By letter dated February 13, 1984, the Deputy Zoning Administrator advised the lessee that Certificate of Occupancy No. B-136951 was erroneously issued. The lessee was directed to file an application for a variance from the use provisions of the Zoning Regulations in order to continue the use of the subject premises for a parking facility. The lessee was further advised that failure to file before the Board would result in the revocation of its certificate of occupancy.

11. The lessee has properly filed a timely appeal from the decision of the Deputy Zoning Administrator set forth in Finding of Fact No. 10, as provided by Section 201.1 of the Supplemental Rules of Practice and Procedure before the BZA. In the alternative, the applicant requests a variance from the use provisions to allow the continued operation of a parking facility at the subject premises.

12. Counsel for the lessee argued that the District of Columbia is estopped from rescinding Certificate of Occupancy No. B-136951, dated November 23, 1983.

13. The elements of estoppel, as set forth by the D.C. Court of Appeals in Saah vs. the D.C. BZA, 433 A.2d 1114 (D.C. App., 1981), are as follows:

- a. A party, acting in good faith;
- b. On the affirmative acts of a municipal corporation;
- c. Makes expensive and permanent improvements in reliance thereon; and,

- d. The equities strongly favor the party seeking to invoke the doctrine.

14. In November, 1983, the lessee leased the subject premises with the intent of using the premises as a commercial parking facility.

15. On November 17, 1983, the lessee, in good faith, applied to the D.C. Department of Consumer and Regulatory Affairs for a certificate of occupancy to operate the subject premises as a parking lot.

16. After review, the District of Columbia issued Certificate of Occupancy No. B-136951 on November 23, 1983 and subsequently issued a license to operate the subject premises for a parking establishment.

17. The issuance of the certificate of occupancy and license for use of the subject premises as a parking lot represents an affirmative action of the District of Columbia Government.

18. In reliance on the issuance by the District of Columbia of appropriate permits and licenses for a parking establishment, the lessee made improvements to the site at a total cost of approximately \$6,346 to prepare the site for parking use. In addition to the expense of improving the site, the lessee incurred costs for leasing the site at \$600 per month and for personnel to manage the facility.

19. The improvements made to the subject facility include the construction and heating of an attendant's shelter within the existing structure, the printing and installation of signs, the printing of parking tickets, the installation of a time clock, the installation of fluorescent lighting within the existing structure and floodlights on the exterior of the lot, the painting of the existing structure and striping of the existing paving, and insurance costs for the facility. The lessee also incurred an expense of approximately \$1,720 for attorney's and filing fees generated by the filing of the subject appeal and variance request. All improvements to the lot were completed prior to the receipt of the notification of the error, dated February 13, 1984.

20. Counsel for the lessee argued that the equities favor the lessee in that the rescission of approval to operate the parking facility will result in an irreversible loss of the monies expended by the lessee and estimated income based on its reliance on the permits issued by the District of Columbia.

21. The Zoning Administrator testified that he received a complaint regarding the use of the subject premises

as a parking lot from the Citizens Association of Georgetown. After a review of the records, the Zoning Administrator concluded that the certificate of occupancy was erroneously issued based on the current zoning of the property and the prior use of the property as indicated by previous certificates of occupancy.

22. The subject premises includes former lots 811 and 812, known as premises 1044 and 1046 Wisconsin Avenue, in one lot 120. Certificate of Occupancy No. B-60311, dated March 1, 1967, permitted the use of lot 811, which comprised the northern portion of the subject lot, as a farmer's market. Certificate of Occupancy No. B-24393, dated July 1, 1960, permitted the use of lot 812, which comprised the southern portion of the subject lot, as a welding shop. The property was zoned C-M-2 at that time.

23. The zoning of the subject property was changed from C-M-2 to W-1 on November 20, 1974, pursuant to Zoning Commission Order No. 104, case No. 73-21. A parking lot is prohibited in the W-1 District.

24. As set forth in Finding of Fact No. 10, the lessee was informed of the error made in issuing the certificate of occupancy to use the subject premises as a parking lot. The lessee was also informed that the certificate of occupancy would be cancelled unless the parking lot was granted variance relief by the BZA.

25. The Zoning Administrator noted that item No. 13 of the application for certificate of occupancy filed on behalf of the lessee indicated that the proposed parking was to occupy the lot, not the existing building. It was the Zoning Administrator's opinion that the certificate of occupancy as issued, does not permit the use of the existing structure for parking purposes.

26. The Zoning Administrator testified that a review of the records in his office has not disclosed any building permits that have been issued for the subject premises indicating that any electrical, plumbing or construction work has been properly authorized at the subject premises. There is, therefore, no corroborative evidence that "expensive and permanent" improvements have been made to the property.

27. The lessee argued that both the existing building and lot were included in the application for a certificate of occupancy as evidenced by item No. 12 of the application which indicates that the square footage to be occupied was 4,112 square feet. The total area of the subject lot is 4,112 square feet. In addition, the license for the parking establishment indicates that the area of the parking establishment is 4,112 square feet.

28. The lessee argued that the zoning history of the site, the previous parking activities on the subject premises, and the existence of a structure suitable for parking purposes on the site constitutes an extraordinary or exceptional condition of the property necessary to justify the granting of a use variance.

29. The lessee further argued that a denial of the requested use variance would result in an undue hardship upon the owner of the property, because the property could not be put to a reasonable, income-producing use which would offset the expense of owning and maintaining the property.

30. The lessee testified that the parking establishment provides a needed service for the immediate area due to the existing demand for parking in the Georgetown area. The use would not generate increased traffic in the area but draws its clientele from the existing number of employees and visitors to the area.

31. The lessee manages another parking facility at 3212 Grace Street, N.W., on the same block as the subject parking establishment, pursuant to Certificate of Occupancy No. B-38723, dated December 18, 1962. The zoning of that facility is also W-1.

32. The owner's real estate advisor testified that the owner was aware of the zoning of the subject premises at the time of its purchase. The owner was unaware that a parking lot was prohibited in the W-1 District because the property was vacant except for illegal parking activities, the existing improvements were suitable for parking purposes, and other parking facilities were located nearby.

33. A portion of the subject premises, former lot 811, was previously used for parking and storage of automobiles pursuant to Certificate of Occupancy No. B-26748, dated December 22, 1960. That certificate of occupancy was superseded by Certificate of Occupancy No. B-60311, dated March 1, 1967, for the farmer's market.

34. The owner's real estate advisor testified that the lot is level and rectangular in shape but that the owner does not have specific plans to develop the subject property at present because existing market conditions and prohibitive construction costs are not conducive to viable development of the site at the present time. The existing lease requires a two-month notice to the lessee should the owner enter into an agreement to sell or develop the property. The income derived from leasing the lot provides a small income during the interim period to help defray the expense of owning and maintaining the property.

35. The lessee testified that the most appropriate interim use of the subject property pending development is for parking purposes. It was his opinion that the existing structure can not be used for any purpose except for parking. The structure is basically a shell, with a large door and apron for vehicular access to the structure. The remainder of the lot is paved and striped for parking purposes.

36. The lessee further testified that the use of the subject site for parking purposes will not result in objectionable conditions, as the lot provides a needed service in the area, the lot is occupied and maintained in a clean condition, and the use does not attract additional traffic to the area.

37. Advisory Neighborhood Commission 2E, by letter dated May 8, 1984, opposed the granting of the subject appeal or variance for the following reasons:

- a. The Waterfront Districts prohibit a number of vehicular-oriented uses, including a parking lot.
- b. Certificate of Occupancy B-60311, dated March 1, 1967, cancelled the previous certificate of occupancy No. B-26748, dated December 22, 1960.
- c. The owner did not properly change the address of the subject premises from 1044 and 1046 Wisconsin Avenue to 3200 Grace Street, thus confusing the record search because certificates of occupancy are filed by street address, not by lot and square.
- d. The lessees claim of "expensive and permanent" improvements to the site is not supported by an ANC inspection of the premises.
- e. Uses specifically prohibited by the Zoning Regulations should not be subjected to variance procedures in order to protect the integrity of the zone plan.

38. As to the appeal, the Board first considered the issue of estoppel. The Board finds the lessee has met two of the elements as set forth in Finding of Fact No. 13, in that the lessee acted in good faith, in reliance on the affirmative action of the District of Columbia evidenced by the issuance of permits. The Board is not persuaded that there have been "expensive and permanent" improvements to the premises nor that the equities strongly favor the appellant.

39. The Board finds that the improvements to the subject premises, as noted in Findings of Fact Nos. 18 and 19, do not represent "expensive and permanent" improvements to the property. There has been no demolition of existing structures. The only construction on the site has been an attendant's shelter within the existing building. There is no record of permits authorizing such improvements.

40. The expense of installing floodlights, painting, signs, parking tickets, a time clock, plus the cost of the lease, insurance and personnel are incidental to the day-to-day operation and basic maintenance of the parking facility and do not represent "permanent" improvements to the site.

41. As set forth in Sub-section 4401.1 of the Zoning Regulations, the Waterfront Districts are intended to encourage a diversity of land uses and to be relatively self-contained by supplying a variety of housing, service, employment and recreation opportunities in one location. This characteristic allows one area to serve many different needs of a single population, thereby reducing the amount of vehicular traffic generated by the uses in those Districts.

42. In furtherance of the purpose of the Waterfront District, Sub-section 4402.4 of the Zoning Regulations specifically prohibits several vehicle-oriented uses such as automobile or motorcycle repairs or sales, car wash, drive-in establishment, gasoline service station, and parking lot.

43. The Board finds that the equities do not strongly favor the appellant in the subject case. Although the lessee may suffer a monetary loss due to the expenditures previously discussed, the Board is of the opinion that the interests of the property owner and of the District of Columbia would be better served through the protection and enhancement of the zone district in which the property is located.

44. The Board notes the position of the ANC that uses that are prohibited not be subject to the variance procedure. The language of the Zoning Act and the Regulations provides that a variance may be sought from "the strict application of any regulation ..."

45. As to the request for a use variance, the Board finds that there is no exceptional or extraordinary condition inherent in the property which would warrant the approval of use variance relief.

46. The zoning of the subject site was changed from C-M-2 to W-1 in 1974. The use of the former lot 811 was changed from parking and storage of automobiles to a farmer's market in 1967. Lot 812 was used as a welding shop. The property was not being legally used for parking purposes at

the time that the zoning was changed. It therefore cannot be afforded nonconforming status, as in the case of the parking lot located at 3212 Grace Street, N.W.

47. The testimony of the owner's real estate advisor evidences that, although plans for development are not immediate, the owner intends to develop the property for mixed-use purposes at some time in the future or to sell the property for the purpose of such development. The property is rectangular in shape and topographically level. There is clearly no probative evidence that the property cannot be put to a use permitted in the zone district in which it is located.

48. There was no opposition to the application present at the public hearing.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing finding of fact and the evidence of record, the Board concludes that the subject case is an appeal of the decision of the Deputy Zoning Administrator or in the alternative, a request for a variance from the use provisions to allow a parking lot in a W-1 zone district. As to the appeal, the Board concludes that the elements of estoppel, as outlined in Finding of Fact No. 13, are not in existence. The record evidences that the lessee acted in good faith, in reliance on the affirmative acts of the District of Columbia as found by the Board in Finding of Fact No. 38. However, the record does not contain persuasive evidence that "expensive and permanent" improvements have been made as noted in Finding of Fact No. 39, nor that the equities favor the appellant in this case.

The Board concludes that the plain language of Sub-paragraph 4402.412 prohibits a parking lot on the subject site. Accordingly, the Deputy Zoning Administrator was correct in his application of the Zoning Regulations to determine that the parking lot use should not continue.

In order to be granted a use variance, the applicant must demonstrate the existence of an exceptional or extraordinary situation or condition arising out of the property, and that the strict application of the Regulations causes an undue hardship upon the owner. The applicant must demonstrate that there is no reasonable use that can be made of the property for a purpose for which it is zoned.

As to the use variance, the Board concludes that there is no evidence of an exceptional or extraordinary condition inherent in the property itself which result in an undue hardship upon the owner by precluding the use of the property for purposes for which it is zoned. The applicant argued that the site is well suited for a parking lot, and that

such a use was needed. The applicant did not present any probative evidence that the site was in any way unusual, nor did the applicant show that the property could be used for any of the many uses permitted in a W District under Sub-sections 4402.2 and 4402.3.

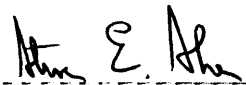
The Board further concludes that the requested relief cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. Accordingly it is ORDERED that the appeal and the application for a use variance be DENIED.

VOTE as to the appeal: 4-0 (Maybelle T. Bennett, William F. McIntosh, and Carrie L. Thornhill to deny; Douglas J. Patton to deny by proxy; Charles R. Norris abstaining).

VOTE as to the application: 4-0 (William F. McIntosh, Maybelle T. Bennett and Carrie L. Thornhill to deny; Douglas J. Patton to deny by proxy; Charles R. Norris abstaining).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 9 NOV 1984

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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